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Attorneys for Defendant,
GENERAL MILLS, INC.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ERIN WRIGHT, individually and as
Class Representative of and for all those
similarly situated,

Plaintiff,

v.

GENERAL MILLS, INC., and DOES 1
through 100,

Defendant.

CASE NO. 08CV1532-L-LSP

Assigned to the Honorable M. James
Lorenz

CLASS ACTION

**JOINT MOTION AND
STIPULATION EXTENDING TIME
FOR DEFENDANT TO RESPOND TO
COMPLAINT PENDING MOTION
TO REMAND**

(Order lodged under separate cover
pursuant to Electronic Case Filing
Administrative Policies and Procedures
Manual, Section 2, subd. (h))

[San Diego Superior Court, Case No. 37-
2008-00054977-CU-BT-NC]

Action Filed: June 4, 2008
Trial Date: Not set.

1 Plaintiff Erin Wright ("Plaintiff") and Defendant General Mills, Inc.
2 ("Defendant"), by and through their respective counsel, hereby stipulate and agree to
3 the entry of an Order extending the time in which Defendant must file a response to
4 Plaintiff's Complaint.

5 1. WHEREAS Plaintiff filed her Complaint against Defendant in San Diego
6 Superior Court on June 4, 2008;

7 2. WHEREAS Plaintiff served Defendant's registered agent with the
8 Complaint on July 21, 2008;

9 3. WHEREAS Defendant removed the above-entitled action to this Court on
10 August 20, 2008;

11 4. WHEREAS, pursuant to Federal Rule of Civil Procedure 81(c),
12 Defendant has until August 27, 2008, to respond to the Complaint;

13 5. WHEREAS Plaintiff intends to file a motion to remand this action to San
14 Diego Superior Court by August 29, 2008;

15 6. WHEREAS, although the parties disagree over the appropriate
16 jurisdiction to resolve Plaintiff's claims, the parties agree that the interests of judicial
17 economy and efficiency, and their mutual interest in avoiding unnecessary expense,
18 support a continuance of the deadline for the Defendant to respond to Plaintiff's
19 Complaint until after the jurisdictional issues are resolved;

20 7. WHEREAS the parties jointly and respectfully believe that a decision on
21 the issue of federal jurisdiction should occur first, before the parties or the Court
22 address other issues, such as the legal sufficiency of Plaintiff's Complaint, and that
23 this sequence is consistent with U.S. Supreme Court and Ninth Circuit precedent (*see*
24 *generally Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 94-95 (1998)
25 (holding that federal courts must normally determine issues of subject matter
26 jurisdiction before considering a case on its merits); Schwarzer, Tashima, et al., *Cal.*
27 *Prac. Guide: Fed. Civ. Pro. Before Trial* § 2:609.5 (The Rutter Group 2008) ("the
28 district court has an independent obligation to examine whether removal jurisdiction

1 exists before deciding any issue on the merits (even if the merits could be readily
2 resolved...)” (citing *Valdez v. Allstate Ins. Co.*, 372 F.3d 1115, 1116 (9th Cir. 2004))));

3 8. WHEREAS the parties agree, subject to the Court’s approval, that
4 Defendant’s response (answer, motion to dismiss, or other response) to Plaintiff’s
5 Complaint shall be due twenty (20) days after this Court rules on Plaintiff’s
6 forthcoming motion to remand;

7 9. WHEREAS Plaintiff agrees to grant Defendant a twenty (20) day
8 extension to respond to her Complaint in the event Plaintiff does not file a motion to
9 remand;

10 10. WHEREAS Plaintiff agrees not to seek the entry of default until at least
11 five (5) court days after the Court rules on this Joint Motion and Stipulation;

12 11. Except as specifically described herein, nothing in this Joint Motion and
13 Stipulation constitutes a waiver of any rights of Plaintiff or Defendant;

14 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and
15 between Plaintiff and Defendant, subject to concurrence and order by the Court, that
16 the deadline for Defendant General Mills, Inc. to answer, file a motion to dismiss, or
17 otherwise respond to Plaintiff Erin Wright’s Complaint shall be the later of:

18 (a) twenty (20) days after the Court rules on Plaintiff’s to-be-filed motion to remand,
19 or (b) September 16, 2008 if Plaintiff does not file a motion to remand.

20 **IT IS SO STIPULATED.**

21 DATED: August 22, 2008

McNULTY LAW FIRM
JACKSON & TUCKER PC
LAW OFFICE OF ANNA DEAN FARMER
THE GILBERT LAW FIRM

22
23
24
25 By: 

PETER McNULTY

26
27 Attorneys for Plaintiff,
ERIN WRIGHT

1 DATED: August 22, 2008

GIBSON, DUNN & CRUTCHER LLP

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3 By: Christopher Chorba ^{BEJ}
4 CHRISTOPHER CHORBA

5 Attorneys for Defendant,
6 GENERAL MILLS, INC.

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CERTIFICATE OF SERVICE

I, Carla Durkee, declare as follows:

I am employed in the County of Orange, State of California; I am over the age of eighteen years and am not a party to this action; my business address is 3161 Michelson Drive, Irvine, California 92612-4412, in said County and State.

I hereby certify that on **August 22, 2008**, the attached document was electronically transmitted to the Clerk of the Court using the CM/ECF System.

I am employed at the law firm of Christopher Chorba, a member of the bar of this court, and that the foregoing document(s) was(were) printed on recycled paper.

I further certify that copies of the foregoing were sent on **August 22, 2008**, via **FACSIMILE AND FIRST CLASS MAIL** to the following parties:

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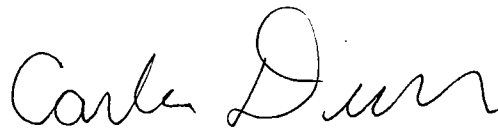
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13 I declare under penalty of perjury that the foregoing is true and correct.

14 Executed on **August 22, 2008.**

15 
16 Carla Durkee

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